WONG YOKE KONG & ORS

v.

AZMI M ANSHAR & ORS

HIGH COURT MALAYA, KUALA LUMPUR
HELILIAH YUSOF J
[CIVIL SUIT NO: 23-61-1996]
14 MARCH 2003

TORT: *Defamation - Libel in newspaper - Malay Mail article - Whether there was evidence to connect libel to plaintiffs - Applicability of Morgan v. Odhams Press Ltd. & Knupffer v. London Express Newspapers Ltd. - Alleged offensive sentence - What was their natural and ordinary meaning - Whether defamatory - Difference between insults, mockery and ridicule - Whether an imputation could be defamatory - Risk of injury to business reputation - Effect of sarcasm - Whether alleged offensive sentence had defamatory imputation on conduct of business of a legal firm*

The plaintiffs, advocates and solicitors practicing in the firm of Messrs. Nazri Aziz & Wong ('law firm'), claimed damages for libel against the defendants in relation to certain words contained in an article prepared by the 1st defendant. The words complained of formed part of an article entitled 'Rearview Glimpse of 1995 Politics' published in the 1 January 1996 issue of the Malay Mail. The plaintiffs submitted that the article contained an allegedly offensive sentence pertaining to the plaintiffs' law firm whilst referring to one of the former partners of the law firm, one Dato' Seri Nazri Aziz ('Nazri') who had stopped practice and left the partnership upon his appointment as the Deputy Minister in the Prime Minister's Department. It was the defendants' case that the plaintiffs should prove that an ordinary reader reading the article would reasonably come to the conclusion that whatever allegedly offensive sentence that was incorporated in that article referred to the plaintiffs. The defendants also canvassed the points that the plaintiffs were not identified in the article and that during the time the article was written, Nazri was then not a lawyer practising with the law firm, hence the 1st defendant was in actuality writing about Nazri as a politician and not as a lawyer. The issues that arose for determination were firstly, whether the words that were published were defamatory and secondly, whether the words were defamatory to the plaintiffs.

Held:

[1] On the question whether there was evidence to connect the libel to the plaintiffs, following the case of *Morgan v. Odhams Press Ltd*, it is for a plaintiff to prove that the defamatory words were published of and were concerning him. The onus is on the plaintiff, and if the plaintiff does not discharge it, the plaintiff would have no cause of action. The test is whether the plaintiff may reasonably be understood to be referred to by the words. (p 566 c-e)

[2] The decisions in the *Knupffer v. London Express Newspapers Ltd* and *Morgan (supra)* cases are capable of being read together. *Knupffer* clarified the rules for the determination of the question of identification in what was referred to as group libels. (p 577 b-c)

[3] Letters were adduced in evidence that disclosed phone calls made to the plaintiffs' firm which indicated the effect of publication of the alleged offensive sentence on others. Evidently, the letters indicated that these were readers who had reacted to reflect that the alleged offensive sentence had reference to the plaintiffs. (pp 577 f-g & 578 b)

[4] Although the defendants submitted that the whole article related to politicians, yet in relation to Nazri, there was an additional sentence incorporating the words 'his law firm'. A defendant had admitted to Nazri being associated with a law firm. However, what the defendant intended to refer to was irrelevant and this point is not without judicial support. Therefore, reasonable persons acquainted with the plaintiffs on reading the article would come to the conclusion that para. 26 of the article referred to the plaintiffs. (p 578 c-e & h)

[5] The statement of claim and the defence set out in the pleadings disclosed that both the plaintiffs and the defendants contended that the words found in the alleged offensive sentence were to be understood 'in their natural and ordinary meaning'. The natural and ordinary meaning includes what might popularly be understood as an innuendo which is something which is insinuated or inferred from the words. (pp 580 a & 583 g)

[6] There were two steps involved in deciding whether the alleged offensive sentence was defamatory or not. The first was to consider what meaning the words would convey to the ordinary person. Having established the meaning, the next stage was whether under the circumstances in which the words were published, the reasonable person was likely to understand them in a defamatory sense. (p 590 h)

[7] A line should be drawn between insults and mockery on the one hand (which is not defamatory) and ridicule (which may be defamatory). (p 593 a)

[8] An imputation is defamatory if it tends to lower a person in the estimation of others when it affects any aspect of his reputation. The defendants in this instance had referred to the business of the law firm and not the political activity of Nazri. It may not be defamatory to say that a lawyer is less talented than another but it may be defamatory to impute that the business practice of a law firm is discreditable. There is risk of injury to its business reputation. (p 594 f-h)

[9] The article concerned did not contain glowing tributes but to be full of sarcasm. The effect of a sarcasm is to render defamatory an apparently innocent expression. (p 595 b-c)

[10] The words did bear defamatory imputation on the conduct of the business of a legal firm, in that it implied that since Nazri was somewhat dubiously double dealing in his political activity, it was hoped that his law firm would not conduct business in a way that could be equated to him. Thus, the alleged offensive sentence imputed conduct the reasonable man would consider discreditable. (p 595 d-f)

[Claim allowed.]

Case(s) referred to:

A Balakrishnan & Ors v. Nirumalan K Pillay & Ors [1999] 3 SLR 22 ***(foll)***

Abdul Khalid Bakar Shah v. Party Islam SeMalaysia (PAS) & Ors [2001] 4 CLJ 15 HC ***(refd)***

Berkoff v. Berchill [1996] 4 All ER 1008 CA ***(refd)***

Cassidy v. Daily Mirror [1929] AII ER 117 ***(foll)***

Charleston v. News Group Newspapers [1995] 2 All ER 313 ***(refd)***

Knupffer v. London Express Newspaper Ltd [1944] AC 116 ***(foll)***

David Syme & Co & Anor v. Canavan [1918] 25 CLR 234 ***(refd)***

Lee Kuan Yew v. Derek Gwyn Davies & Ors [1990] 1 CLJ 583; [1990] 3 CLJ (Rep) 691 HC

Lewis & Anor v. Daily Telegraph Ltd [1963] 2 All ER 151 ***(refd)***

Morgan v. Odhams Press Ltd [1971] 1 WLR 1239 ***(foll)***

Norman v. Future Publishing Ltd [1999] EMLR 325 ***(refd)***

Slim & Ors v. Daily Telegraph Ltd & Anor [1968] 1 All ER 497 ***(refd)***

The Institute of Commercial Management United Kingdom v. The New Straits Times [1993] 2 CLJ 365 HC ***(refd)***

Others source(s) referred to:
David Price, *Defamation Law, Procedure & Practice,* 2nd edn

For the plaintiffs - R Thalayan; M/s Charis Wong
For the defendants - Mohd Izral Khairy (Lorraine Cheah); M/s Shearn Delamore & Co

[The defendants have appealed to the Court of Appeal vide Civil Appeal No: W-02-312-2003]

Reported by Raja Vishnu Sivarajah

JUDGMENT

Heliliah Yusof J:

In this action, the four plaintiffs are claiming against the defendants damages for libel in respect of certain words which are contained in an article entitled *"Rearview Glimpse of 1995 Politics"* which appeared on p. 2 of the issue of the Malay Mail for 1 January 1996. The article was a review prepared by the 1st defendant. The 2nd defendant is and was at all material times employed by the 3rd defendant as editor of the Malay Mail. The 3rd defendant is the publisher and printer of the Malay Mail. The plaintiffs at p. 34 of the pleading state:

> On page 2 of the issue of The Malay Mail for 1st January 1996, the First Defendant wrote and published and the Second and Third Defendants published or caused to be published prominently the following words of and concerning the Plaintiffs and of and concerning them in the way of their profession and in relation to their conduct therein which are defamatory of the Plaintiffs:

It is to be stated at the outset that there is no contention that there has been a publication and it would appear that the defendants have chosen not to advance plea of justification. Hence the issues that are necessary for determination are firstly, whether the words that have been published are defamatory and secondly, whether the words are defamatory of the plaintiffs. Before examining the two issues it is necessary to refer to the words that have been complained of and which have been pleaded in para. 7 of the statement of claim. The words complained of form part of an article entitled *"Rearview Glimpse of 1995 Politics"* published in the 1 January 1996 issue of the Malay Mail. A copy of the article in which the words complained of have been included is found at p. 1 of encl. (44) bundles of documents. At the material time of the publication of that article the plaintiffs were advocates and solicitors practicing in the firm of Messrs. Nazri Aziz & Wong and presently are practicing in the same. As at 1 January 1996 the

four plaintiffs were the partners of Messrs. Nazri Aziz & Wong. Messrs. Nazri Aziz & Wong was formed on 12 July 1982 as a partnership between Dato' Seri Mohamed Nazri bin Abdul Aziz and the 1st plaintiff pursuant to a deed of partnership dated 20 August 1982. There was disclosed the deed of partnership dated 16 September 1991 which was entered into between the 1st plaintiff and Dato' Seri Nazri Aziz. Subsequently, it transpired that other deeds of partnership were also concluded to admit the 2nd plaintiff as a third partner as well as the 3rd plaintiff as the fourth partner.

On 13 October 1994 the Bar Council was informed that the fourth plaintiff had been appointed as resident branch partner of the branch office of Messrs. Nazri Aziz & Wong. In a letter dated 18 May 1995 the firm of Nazri Aziz & Wong informed the Bar Council that Dato' Seri Nazri Aziz had been appointed then as the Deputy Minister in the Prime Minister's Department on 8 May 1995, and had therefore stopped practice and left the partnership of Messrs. Nazri Aziz & Wong. Although Dato' Seri Nazri Aziz had ceased his legal practice and partnership in Messrs. Nazri Aziz & Wong on 18 May 1995, the remaining partners (ie, all the plaintiffs) continued with the partnership of the firm under the same name of Nazri Aziz & Wong as stipulated in the deeds of partnership. The article as mentioned above was found in 1 January 1996 issue of the Malay Mail. The specific parts of the article relevant for the present action are as follows:

> Datuk Nazri Aziz: Last year, he led the Umno Youth charge that rejected Rahim's leadership and then claimed he was insulted when he felt the Umno leadership did not respect the movement's wishes.
>
> He spat out some pretty unbecoming words against the Umno leadership, especially on El Presidente, but had to gobble them back and apologised publicly.
>
> Now, in a turnaround, he wants to give the Youth leader post back to Rahim on a silver platter. **Hope his law firm is doing decent business** ... (emphasis added)

It is the contention of the plaintiffs that the "law firm" referred to in the said article can only refer to Messrs. Nazri Aziz & Wong and no other. The plaintiffs therefore contend that that article which was published barely seven months after Datuk Seri Nazri Aziz ceased practice and had left the partnership there appeared to be no other law firm which carries the name Nazri Aziz in its name.

The case for the defendants in general is that the plaintiffs must prove that an ordinary reader reading the article would reasonably come to the conclusion that whatever allegedly offensive sentence that is incorporated in that article refers to the plaintiffs. It is also the defendant's case that the plaintiffs were never identified in the article and/or the allegedly offensive passage and sentence since at the time of the publication of the article Datuk Seri Aziz was also no longer practicing as a lawyer. Before embarking on the position of the law it is necessary to note the parts of the statement which are alleged to be defamatory of the plaintiffs again as follows:

... Hope his law firm is doing decent business ...

Hereinafter the words complained of are to be referred to as the 'allegedly offensive sentence'. For ease of reference the relevant paragraphs appearing in the article have been No. 24, 25, 26 respectively.

The plaintiffs submitted that immediately after the publication of the article complained of, a letter (exh. P1) p. 9 of Bundle C dated 6 January 1996 in which the letter was addressed by the plaintiffs' firm to the writer of the article, the editor of the Malay Mail and the New Straits Times Press (M) Bhd. The contents of the letter are as follow:

1. Encik Azmi M. Anshar,
   c/o The Malay Mail,
   31, Jalan Riong,
   59100 Kuala Lumpur.

2. The Editor,
   The Malay Mail,
   31, Jalan Riong,
   59100 Kuala Lumpur.

3. The New Straits Times Press (Malaysia) Bhd,
   31, Jalan Riong,
   59100 Kuala Lumpur.

Dear Sirs,

RE: Article By Azmi M. Anshar Entitled 'Rearview Glimpse Of 1995 Politics' Appearing On Page 2 Of The January 1, 1996 Edition Of The Malay Mail

We refer to the aforesaid article and in particular to the report therein on Datuk Nazri Aziz.

Immediately after the flippant comments on Datuk Nazri's handling of the Tan Sri Rahim Thamby Chik issue, the following sentence concluded your report on Datuk Nazri:

> Hope his law firm is doing decent business ...

The reference to Datuk Nazri's law firm in the said article obviously meant our law firm, Nazri Aziz & Wong.

We are totally embarrassed and distressed by the connotations and implications arising from the said article which are highly defamatory to our law firm.

We are, therefore, writing to ask you:

(1) to publish in the next issue of your newspapers a full and complete withdrawal and apology, in terms to be approved by us, in as prominent a position as the article complained of;

(2) to give us your written assurance and undertaking that you will not further publish this or any similarly libellous article concerning us;

(3) to pay to us a proper and suitable sum as damages for the very serious injury to our reputation and for the embarrassment and distress caused to us; and

(4) to indemnify us in respect of all costs which may be incurred by us in this matter.

Please let us have a reply at once and in the meantime it must be clearly understood that we reserved all our rights in the matter.

Yours faithfully,

(Sgd):
Wong Yoke Kong

In the course of the proceedings it was disclosed through the defendants' affidavit for the purpose of examination-in-chief (Q19) that after having received this letter the 1st Defendant merely referred it to the 3rd defendant's legal department. The present proceedings is confined to the question of liability.

The Issues

Carter-Ruck on *Libel And Slander* (5th edn.) at p. 35 discussed the essentials necessary to found an action for libel or slander. It is stated that in any action for defamation whether it be for libel or slander, the plaintiff must prove that the matter complained of: (i) is defamatory (defamation);

(ii) refers to the plaintiff (identification); and (iii) has been published to a third person (publication). The burden is upon the plaintiff to establish the abovementioned essential ingredients. If there is any truth in the matter that is complained of that entire burden is generally on the defendant. However, in the present proceedings it is no longer necessary to consider the third essential ingredient namely the question of publication as it is not disputed that there has been a publication to a third party in the form of circulation of the tabloid.

The Question Of Identity

In this case the alleged offensive sentence does not *ex facie* refer to the plaintiff. It is therefore necessary to deal with the question whether there is evidence given to "connect the libel to the plaintiff". As was stated in *Morgan v. Odhams Press Ltd.* [1971] 1 WLR 1239, 1263 – it is always for the plaintiff to prove that the defamatory words were published of and concerning him. The onus is firmly upon him, and if he does not discharge it, he has no cause of action. – per Lord Donovan. If the plaintiff does not establish by the evidence, the above elementary proposition, it is not necessary for me to proceed to the next stage that is decide whether the alleged offensive sentence is defamatory.

The test is whether the plaintiff may reasonably be understood to be referred to by the words. Before examining the judicial authorities on this element of defamation, I propose to venture into the facts and the evidence in support thereof. The article incorporating the alleged offensive sentence is entitled *"Rearview Glimpse of 1995 Politics"*. Several political parties are identified, so are several politicians who are identified by name. The latter include the Prime Minister, the former Deputy Prime Minister and the Secretary General of DAP. A specific name Dato' Nazri Aziz is also mentioned in the context of the paragraphs already elaborated above. At the time of the publication of the article in the Malay Mail on January 1996, Dato' Nazri had at that time been appointed as Deputy Minister for a period of about seven to eight months.

Counsel for the plaintiffs has submitted that on the evidence it is disclosed that the 1st defendant has stated that he knows that Dato' Nazri Aziz was a lawyer and a partner of a law firm but did not know its name. Neither does he know about the partners in the law firm. The 1st Defendant did not have any occasion to deal with the law firm or to visit it.

On the part of the defendants it was admitted that Dato' Nazri was no longer practicing as a lawyer as he had been appointed as Deputy Minister and it was averred that the general public knew the fact.

In the course of cross-examination the 1st defendant however persisted in maintaining that at the time of writing the article he did not think of Dato' Nazri as a lawyer but as a politician. The relevant part of the line of questioning that was put to the 1st defendant is as follows:

...

3. Q: In your WS-DW1, you had given evidence that you know Dato' Nazri Aziz was a lawyer and a partner of a law firm but did not know its name. I put it to you that the reference to Dato' Seri Nazri Aziz's law firm in the article complaint of was a reference to the very said legal firm in which he was practicing prior to becoming a Deputy Minister. Do you agree.

   A: No.

4. Q: Then to which law firm did you refer to when you said 'Hope his law firm is doing decent business'.

   A: A law firm that came at the back of my mind just that Dato' Nazri was a lawyer and had been a partner in a law firm.

5. Q: Based on your answer just now, is it correct that the reference 'his law firm' is a reference to the law firm he was practicing in before he became a Deputy Minister.

   A: No, I did not know his law firm's name.

6. Q: At the time you wrote the article complaint of, did you know that Dato' Nazri Aziz was no longer a practicing lawyer and had resigned as the partner of his law firm.

   A: I did not think of Dato' Nazri as a lawyer. I only thought of him as a politician.

7. Q: I repeat Q6 above

   A: Not consciously.

8. Q: Can you explain what you mean 'Not consciously'.

   A: Again I repeat my answer to Q6.

9. Q: Why then did you write about his law firm in the article complaint of.

A: I knew he was a lawyer before is just that I did not think of him as a lawyer but as a politician.

10. Q: Before you wrote and published the article complaint of, did you make any effort to find out whether Dato' Nazri Aziz was still a practicing lawyer or still a partner in his law firm.

A: I did not have to.

11. Q: I put it to you that you were reckless in making reference to Dato' Nazri Aziz's law firm in the article complaint of without making any effort to find out whether Dato' Nazri Aziz was still a partner in his law firm.

A: I don't agree.

12. Q: Being a senior journalist with 15 to 16 years experience when writing the article complaint of, did you know that a Deputy Minister cannot have any other full time occupation besides being a Deputy Minister.

A: I refer to Q10, my answer 'I did not have to". It is understood.

13. Q: What is understood.

A: That a Deputy Minister or a Minister cannot have any other full time occupation as described by Counsel.

14. Q: Then why did you make reference to his law firm when you knew he could not have been practicing law as a partner in his law firm when he is a Deputy Minister.

A: That line is taken out of context. You should be able to read the whole article and a reader would enjoy the true spirit of what I wrote. It is meant to be a satire or a parody of the dubious achievements of many politicians not just Dato' Nazri and he is in good company because I also wrote about, among others the Y.B. Lim Kit Siang and I mentioned something about the Prime Minister, Deputy Prime Minister at that time and a host of senior politicians both from the government and the opposition.

15. Q: Why should you make reference to his law when you are writing about 'dubious achievements of politicians'.

A: I simply wanted to point out that Dato' Nazri failed as a politician that year and that he should just stop being a politician and go back to being a lawyer.

I now turn to the question of law applicable. Here there seems to be a difference in the line of approach of counsel for plaintiffs and defendants. The difference relates to the question of principle applicable. Counsel for the plaintiffs relies primarily on the decision in *Knupffer v. London Express Newspapers Ltd.* [1944] AC 116.

Counsel for the plaintiff, apart from citing *Knupffer*'s case also drew to my attention the following cases:

(1) *David Syme & Co. & Anor v. Canavan* [1918] 25 CLR 234 at p. 238.

(2) *The Institute of Commercial Management United Kingdom v. The New Straits Times* [1993] 2 CLJ 365.

(3) *Abdul Khalid Bakar Shah v. Party Islam SeMalaysia (PAS) & Ors*. [2001] 4 CLJ 15 at pp. 21 & 22.

Cases No. (2) and (3) above are Malaysian cases wherein the decision in *David Syme*'s case was referred to and applied. And in both cases the test that was applied by Isaacs J in the *Syme*'s case was also reapplied. The test is as follows:

> The test of whether words that do not specifically name the plaintiff refer to him or not is this: Are they such as reasonably in the circumstances would lead persons acquainted with the plaintiff to believe that he was the person referred to? ***That does not assume that those persons who read the words know, all the circumstances or all the relevant facts***. But although the plaintiff is not named in words, he may, nevertheless, be described so as to be recognised: **and *whether the description takes the form of a word picture of an individual or the form of a reference to a class of persons of which he is or believed*** *to be a member or any other form, if in the circumstances the description is such that a person hearing or reading the alleged words would reasonably believe that the plaintiff was referred to, that is sufficient reference to him.* (emphasis added)

Another case on point is the case of *Le Fanu v. Malcalmson* [1848] 1 HLC 637. In this case a newspaper article imputed that "in some of the Irish factories" cruelties were practised upon the employees and the plaintiffs, who were owners of a factory in Ireland, had proven to the satisfaction of the jury that the newspaper article was referring especially to their factory. In an appeal to the House of Lords to arrest judgment for the plaintiff, the appeal was dismissed. In giving judgment Lord Campbell said at paragraph 668:

> Where a class is described, it may very well be that the slander refers to a particular individual. That is a matter of which evidence is to be laid before the jury, and the jurors are to determine whether, when a class is referred to, the individual who complains that the slander applied to him is, in point of fact, justified in making such complaint. That is clearly a reasonable principle, because whether a man is called by one name, or whether he is called by another, or *whether he is described by a pretended description of a class to which he is known to belong, if those who look on, know well who is aimed at, the very same injury is inflicted, the very same thing is in fact done as would be done if his name and Christian name were ten times repeated.* (emphasis added)

It would appear that the decision in the Singapore case of *A Balakrishnan &_Ors v. Nirumalan K Pillav & Ors.* [1999] 3 SLR 22 at pp. 28 & 29 LP Thean JA in delivering the judgment of the Court of Appeal also referred to the *Knupffer* case and more specifically to the observation of Viscount Simons and Lord Atkins. What is the observation?

The words of Viscount Simon LC in the *Knupffer*'s case are as follows:

> My Lords, it is an essential element of the cause of action for defamation that the words complained of should be published "of the plaintiff". If the words are not so published, the plaintiff is not defamed and cannot have any right to ask that the defendant should be held responsible to him in respect of them ...
>
> ... Where the plaintiff is not named, the test which decides whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to ...

Certain other passages in the judgment of Viscount Simon need also to be mentioned as relevant to the present cause of action:

> ... In the present case the statement complained of is not made concerning a particular individual, whether named or unnamed, but concerning a group of people spread over several countries and including considerable numbers. No facts were proved in evidence which could identify the appellant as the person individually referred to. Witnesses called for the appellant were asked the carefully framed question: "To "whom did your mind go when you read that article?" and they not unnaturally replied by pointing to the appellant himself, but that is because they happened to know the appellant as the leading member of the society in this country and not because there is anything in the article itself which ought to suggest even to his friends that he is referred to as an individual.

> ... The first question is a question of law – can the article, having regard to its language, be regarded as capable of referring to the appellant? The second question is a question of fact – Does the article, in fact, lead reasonable people, who know the appellant, to the conclusion that it does refer to him? ...

However, in order to appreciate the purport of Viscount Simon's statement the facts of *Knupffer*'s case need to be outlined. The respondents in this case printed and published in their newspapers on 1 July 1941 a wartime article which accused a Russian emigre group called Mlado Russ or Young Russia of being instruments of Hitler. The group numbered 24 members in England and about 2000 in the world. The plaintiff/appellant was the Head of the British Branch. The following words were found in the article:

> ... They are a minute body professing a pure Fascist ideology who have long sought a suitable fuehrer – I know with what success. Established in France and the United States they claim to have secret agents able to enter or leave the Soviet Union at will. Hitler intends to nominate a puppet fuehrer from their ranks to replace the Soviet national leaders of the Kremlin, and establish a reactionary totalitarian serf State on the German and Italian model. The proposed line of operation is the seducing of Red Army officers from their allegiance to their country and with their aid destroying trade unions, co-operatives, collective farms, and the Soviet parliamentary system with a ruthless massacre of all the present leaders, great and small, of the Russian people. The vast majority of Russian emigres repudiate these people, but Hitler is accustomed to find instruments among the despised dregs of every community.
>
> ... Evidence was given at the trial that the appellant had joined the Young Russian Party in 1928, that in 1935 he became assistant representative of the party in Great Britain, and that in 1938 he was appointed representative of the party in Great Britain and head of the British branch. The headquarters of the party were in Paris until June, 1940, when they were removed to America. The total membership was about 2,000 and the British branch comprised twenty-four members. Four witnesses who were acquainted with the appellant were called on his behalf and were asked questions to the following effect: "To "whom did your mind go when you read that article?" Each intimated that it was to the appellant. Stable J, held that the words of the libel referred to the appellant and entered judgment for him for 3,500 damages. The Court of Appeal (Mackinnon & Goddard L.JJ.) held that the words could not be regarded as referring to him and allowed the appeal." The decision of the Court of Appeal was affirmed.

Lord Atkin's judgment is also instructive since the facts of the case is one where the 1st plaintiff and the other plaintiff have not been individually identified by name. Lord Atkin stated (at p. 121):

> ... The only relevant rule is that in order to be actionable the defamatory words must be understood to be published of and concerning the plaintiff. It is irrelevant that the words are published of two or more persons if they are proved to be published of him, and it is irrelevant that the two or more persons are called by some generic or class name. *There can be no law that a defamatory statement made of a firm,* or *trustees, or the tenants of a particular building is not actionable, if the words would reasonably be understood as published of each member of the firm* or each trustee or each tenant. The reason why a libel published of a large or indeterminate number of persons described by some general name generally fails to be actionable is the difficulty of establishing that the plaintiff was, in fact, included in the defamatory statement, for the habit of making unfounded generalizations is ingrained in ill-educated or vulgar minds, or the words are occasionally intended to be a facetious exaggeration. Even in such cases words may be used which enable the plaintiff to prove that the words complained of were intended to be published of each member of the group, or, at any rate, of himself. (emphasis added)

In support of his argument that the alleged offensive sentence is not capable of bearing a reference to the plaintiffs, counsel for the defendants contends that the better judicial decision to consider for application is the case of *Morgan v. Odhams Press Ltd* [1971] 1 WLR 1239 which has been cited in the Singapore case of *Lee Kuan Yew v. Derek Gwyn Davies & Ors* [1990] 1 CLJ 583; [1990] 3 CLJ (Rep) 691. This latter case has also been referred to in the Malaysian case of the *Institute of Commercial Management (supra)* in relation to the point that the words complained of cannot be read in isolation and must be read in the proper context in which they were set. I understand this to mean that the counsel for the defendants is canvassing the point that at the material time the article was written, Datuk Nazri Aziz was then no longer a lawyer practicing with the firm and the defendant was really writing about Datuk Nazri Aziz as a politician and not a lawyer. This really raises the question of intention. However, before addressing the point of intention there is another pressing argument of the counsel for the defendants. This pertains to the decision in the *Morgan*'s case which was cited in the judgment of Thean J in the *Lee Kuan Yew* case. The relevant part of that judgment is as follows (at p. 702):

The plaintiff is not relying on any evidence extrinsic to the article, such as evidence of readers testifying that after reading the article, they understand that the words complained of in para. 9 referred to the plaintiff. His case is that an ordinary reader reading the article would reasonably understand the words to refer to him. So the question is whether an ordinary reader reading the article would reasonably come to that conclusion. The test is an objective one, and in this respect, the following passage from the speech of Lord Guest in *Morgan v. Odhams Press Ltd* at p. 1261 is helpful:

> But here the question is not whether that words are defamatory. It is conceded that they were, if they refer to the appellant. The question is one purely of identity. 'Are the words capable of being understood to refer to the appellant?'. In my view, a somewhat more exacting test should be predicated where the question is one of identity. It is not sufficient for the reader to say 'I wonder if the article refers to Johnny Morgan' nor is pure speculation sufficient. Nor is it sufficient that a reasonable person believes that the words refer to the plaintiff. The test is an objective one. The ordinary reader must be fair-minded and not avid for scandal. He must not be unduly suspicious. The ordinary reader must have rational grounds for his belief that the words refer to the plaintiff.

However it is also necessary to point out that Lord Guest was a dissenting judge in the *Morgan* case. In my view the question to be really is whether the position of the law in the *Knupffer* case relied upon by the counsel for the plaintiffs has in any sense been overruled by implication. My response is in the negative. If one were to peruse the judgments of Lord Reid, Lord Morris of Borth-y-Gest and Lord Pearson, I do not find any change in the position of the law. In the *David Syme* case which was referred to in the Malaysian cases cited above the "'test' applied where the plaintiff was not specifically named was as follows: Are they such as reasonably in the circumstances would lead persons acquainted with the plaintiff to believe that was the person referred to. That does not assume that these persons who read the words know all the circumstances or all the relevant facts." These were the words of Isaac J.

I do not see this approach being adversely changed in the *Morgan*'s case and this is reflected in various parts of the judgments in *Morgan*'s case one of which is found in the judgment of Lord Morris (at p. 1252):

> The real issue was whether the words were published and concerning the plaintiff... The issue was – was the plaintiff hit? If the words referred to the plaintiff there was no suggestion that the words were true. The question for the judge at the end of the plaintiff's case was whether there was

> evidence upon which the jury could (not would) decide in favour of the plaintiff. That in turn raised the question whether the jury could decide some readers (having knowledge of certain circumstances) would reasonably understand the words as referring to the plaintiff ...
>
> In deciding whether or not the words referred to were reasonably understood as referring to the plaintiff the jury would consider any pieces of evidence which hinges and to negate the conclusion that readers reasonably so understood but if the conclusion were reached that the readers did reasonably so understand then it would be immaterial on this issue whether the readers further believed that the words were true or only partly so believe or declined to believe that they were true ...

To my mind the majority judgment in the *Morgan*'s case apart from affirming what was stated in the *Knupffer* case simply went on to explain further that the reasonable people who could reasonably understand the plaintiff are also described as the ordinary sensible readers. This is succinctly described by Lord Pearson (at p. 1267) as follows:

> ... I do not think the reasonable man – **who can also be described as ordinary sensible man** – should be envisaged as reading the article carefully. (emphasis added)

Lord Reid in the same case also said:

> If we are to follow *Lewis* case [1964] AC 234 and take the ordinary man as our guide then we must accept a certain amount of loose thinking. The ordinary reader does not formulate reasons in his own mind: he gets a general impression and one can expect him to look again before coming to a conclusion and acting on it. **But formulated reasons are often an afterthought.** (emphasis added)

And further it should also be pointed out that Lord Morris echoed the "principle" succinctly expressed by Viscount Simon LC in his speech in *Knupffer* which I would also repeat *ad nauseam:*

> Where the plaintiff is not named, the test which deals whether the words used refer to him is the question the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to.

Lord Pearson in dealing with certain arguments that were dealt with in the Court of Appeal said (at p. 1269):

> The Court of Appeal held that the case should have been withdrawn from the jury substantially on two grounds:

(1) that the reasonable man must be envisaged as reading the article carefully so that the discrepancies between "last week" and the week before last and between the "house in Finchley" and the plaintiff's flat situate in Cricklewood on the borders of the Finchley Road area (together with the fact, which must be assumed to be known to the reasonable man, that Miss Murray had not been confined in the plaintiff's flat but was seen with him in public places) would prevent the reasonable man from reading the article as referring to the plaintiff, and

(2) that in order to be defamatory of the plaintiff the article itself must contain some key or pointer indicating that it refers to the plaintiff and there was no such key or pointer in this case.

As to the first ground, I do not think the reasonable man – who can also be described as an ordinary sensible man – should be envisaged as reading this article carefully. Regard should be had to the character of the article: it is vague, sensational and allusive: it is evidently designed for entertainment rather than instruction or accurate information. The ordinary, sensible man, if he read the article at all, would be likely to skim through it casually and not to give it concentrated attention or a second reading. It is no part of his work to read this article, nor does he have to base any practical decision on what he reads there. The relevant impression is what which would be conveyed to an ordinary sensible man (in this case having knowledge of the relevant circumstances) reading the article casually and not expecting a high degree of accuracy.

As to the second ground, I think it is right to say that, in order to be defamatory of the plaintiff, the article must contain something which, to the mind of a reader with knowledge of the relevant circumstances, contains defamatory imputations and points to the plaintiff as the person defamed ...

I would also deal with another point before dealing with the evidence submitted in the present case. This point has been taken in the case of *Cassidy v. Daily Mirror* [1929] All ER 117. The facts of the case simply put are as follows:

... where a newspaper published the photograph of a married man accompanied by the following words: "Mr. M.C., the racehorse owner, and Miss X., whose engagement has been announced," and the wife of M.C. alleged that the photograph and the accompanying words meant, and had been taken by friends of hers to mean, that M. C. was a single man and she had not been married to him, but had been living with him as his mistress,

Held (GREER, L.J., dissenting): the judge at the trial of her action was right in holding that the publication was capable of a defamatory meaning and the jury were justified in saying that it was defamatory, and, therefore, the plaintiff was entitled to recover.

Scrutton LJ in the course of delivering his judgment dealt with a point material to the present cause of action as follows (at pp. 120-121):

> ... the second point taken was that the defendants could not be liable for the inference drawn because they did not know the facts which enabled some persons to whom the libel was published, to draw an inference defamatory of the plaintiff. This was rested on some dicta of BRETT, L.J., in *Henty's* case (1) that the evidence which made apparently innocent statements defamatory must be "known both to the person who wrote the document and the person to whom it was published." This, I think, was originally *obiter*, and, since the decision in *Hulton & Co. v Jones* (4), is no longer law. The statement in FARWELL, LJ's judgment in that case in the Court of Appeal [1909] 2 KB at p. 478) is:
>
> > The rule is well settled that the true intention of the writer of any document, whether it be contract, will, or libel, is that which is apparent from the natural and ordinary interpretation of the written words; and this, when applied to the description of an individual, means the interpretation that would be reasonably put upon those words by persons who know the plaintiff and the circumstances.
>
> The whole of the passages in that judgment on pp. 478 and 479 of [1909] 2 KB are worthy of attention. This judgment was approved by Lord Gorell and Lord Atkinson in the House of Lords, and repeated by Lord Shaw. Lord Shaw says ([1910] AC at p. 26):
>
> > My Lords, I demur to the observation so frequently made in the argument that these principles are novel. Sufficient expression is given to the same principles by Abbot, CJ, in *Bourke v. Warren* (5), in which that learned judge says:
> >
> > > The question for your consideration is whether you think the libel designates the plaintiff in such a way as to let those who knew him understand that he was the person meant. It is not necessary that all the world should understand the libel; it is sufficient if those who know the plaintiff can make out that he is the person meant.
> >
> > I think it is out of the question to suggest that that means 'meant in the mind of the writer,' or of the publisher; it must mean 'meant by the words employed.' The late Coleridge, CJ, dealt similarly with the point in *Gibson v. Evans* (6), when, in the course of the

> argument, he remarked (23 QBD at p. 386): 'it does not signify what the writer meant; the question is whether the alleged libel was so published by the defendant that the world would apply it to the plaintiff'.

Having examined the judicial decision above, I agree therefore with the submission of counsel for the plaintiffs that the decision in the *Knupffer* case and the later decision in the *Morgan* case are capable of being read together. It is only necessary to remember that the decision of the *Knupffer* case was also such that it clarified the rules for determination of the question of identification in what is referred to as group libels. In that case it was determined that when defamatory words are written of a class of persons it is not open to a member of that class to say they were written of him unless the class is so small or so ascertainable that what is said of the class is necessarily said of every member of it or unless the words although they purport to refer to a class yet the circumstances of the particular case in fact refer to an individual.

Another ground of submission of the counsel of defendants is where he questioned the lack of extrinsic evidence.

As used here extrinsic facts go to show that a given statement considered to be defamatory, refers to the plaintiff who is bringing the action. If the final element is an objective one I do not think that in every case the plaintiff will need to produce witnesses who will actually testify that they felt the article referred to him. It will of course be much better if the plaintiff can produce such witnesses.

The evidence that has been adduced, apart from the statements of the 1st plaintiff with regard to the establishment of the partnership and the circumstances upon which Dato' Nazri Aziz left the partnership upon his appointment to a political post, includes two letters dated 3 January 1996 and 5 January 1996. Both letters were written by the 1st plaintiff. In both instances, it would appear that the 1st plaintiff was responding to certain phone calls made to him from one Encik Ahmad Zainal Abidin, c/o Kwong Yik Finance and one Mr. Choo Chuen Tek, c/o Corporate View Sdn Bhd respectively. In the course of cross-examination by the defendant's counsel, it was explained that Corporate View Sdn Bhd is an Amcorp Group Company.

It has been urged upon me that these two letters ought to be discounted as evidence on the ground that these letters were made out with litigation in mind. Counsel for defendants also contends that the sequential nature of

the contents of the letters suggest that those letters were made out to capture what the plaintiff intends namely that the two readers allegedly understood the offensive sentence to Nazri Aziz & Wong.

In my view the letters disclose that there were phone calls made to the plaintiff's firm and the letters have been adduced to indicate the effect of the publication on others. This is to be viewed against the evidence that in the course of the legal business of the plaintiffs their clients include financial institutions. I have no good reasons to disbelieve that such phone calls could not have been made. At this stage I am taking the first line of both letters to indicate that these are readers who have reacted to reflect that the alleged offensive sentence has reference to the plaintiff.

It has been submitted on behalf of the defendants that the whole article relates to politicians as the title itself also seems to suggest. Yet in relation to Dato' Nazri Aziz, there is an additional sentence incorporating the words "his law firm". The defendant himself has admitted to Dato' Nazri Aziz being associated with a law firm. Ironically counsel for the defendants has furnished the court with materials to indicate that what the 1st defendant intended to refer to is irrelevant and this point is not without judicial support. I do not find evidence to negate what has been submitted by the plaintiffs. The evidence of the 1st defendant itself, during cross-examination, indicated that he was evasive when asked about his knowledge as to whether he knew Dato' Nazri Aziz was still a partner in the firm.

To sum it all up I find the words of Scrutton LJ in *Cassidy v. Daily Mirros* [1929] 2 KB (at p. 341) very apt and they are:

> ... In my view, since *E. Hulton & Co. v. Jones* (4), it is impossible for the person publishing a statement which, to those who know certain facts, is capable of a defamatory meaning in regard to A, to defend himself by saying: "I never heard of A and did not mean to injure him." If he publishes words reasonably capable of being read as relating directly or indirectly to A and, to those who know the facts about A, capable of a defamatory meaning, he must take the consequences of the defamatory inferences reasonably drawn from his words.

I hold therefore that reasonable persons acquainted with the plaintiffs on reading the article would come to the conclusion that para. 26 of the article referred to the plaintiffs.

The Alleged Offensive Sentence

Is It Defamatory

Judicial decisions have shown that the definition of what constitutes a defamatory statement is by no means exhaustive. It would be extremely exceptional to find a very simple case where the words could be capable of conveying a single clear as well as indisputable imputation.

Before proceeding to consider the law, there is a need to examine the statement of claim of the plaintiff. Counsel for the plaintiffs suggests that the words complained of in their natural and ordinary meanings meant or were understood to mean the meanings that have been pleaded in paras. 10(1) to 10(4) of the reamended statement of claim:

(1) the Plaintiffs were carrying on indecent businesses by using the said Firm as a front;

(2) the Plaintiffs are unprofessional and/or unethical in the conduct of their legal business;

(3) the Plaintiffs are not fit and proper persons to practise as Advocates and Solicitors of the High Court of Malaya; and

(4) accordingly, the Plaintiffs are guilty of breaching rules of practise and etiquette and/or committed or attempted to commit criminal offences by using the said Firm as front.

At p. 51 of the pleadings the defendants have set out the defence as follows:

8. The Defendants will state that the words reported in paragraph 7 of the re-amended Statement of Claim in their natural and ordinary meaning, mean and is understood to mean that:

a) Dato' Nazri had headed the Pemuda UMNO association which had rejected the leadership of Tan Sri Rahim bin Dato' Tamby Chik.

b) Dato' Nazri Aziz had uttered improper words against UMNO's leadership but then later had to retract the said words and apologize openly and in public.

c) After calling for the rejection of the leadership of Tan Sri Rahim, Dato' Nazri now wishes to surrender the post of Head of UMNO Youth back to Tan Sri Rahim voluntarily and on a silver platter.

d) Dato' Nazri Aziz is someone who can change his views easily and is not steadfast in his convictions.

e) Based on the behaviour shown by Dato' Nazri Aziz it is hoped that his law firm will obtain good business.

a But not the meanings pleaded in paragraph 10 of the Re-amended Statement of Claim, and are true in substance and in fact.

The statement of claim and the defence set out in the pleadings disclose that both the plaintiffs and the defendants contend that the words found in the alleged offensive sentence are to be understood "in their natural and b ordinary meaning".

"I am not aware of any entirely satisfactory definition of the word defamatory" per Niell J in *Berkoff v. Berchill* [1996] 4 All ER, 1008 CA at 1011. *Halsbury's Laws of England* 4th edn. states the essence of a c defamatory statement is its tendency to injure the reputation of another person.

Perhaps in order to begin with the question of the meaning of words reference could be made to the case of *Charleston v. News Group Newspapers* [1995] 2 All ER 313 where Lord Nicholls of Birkenhead d observed:

> My Lords, newspapers get thicker and thicker ... Everybody reads selectively, scanning the headlines and turning the pages. One reader, whose interest has been quickened by an eyecatching headline or picture, will pause and read an article. Another reader, with different interests or e less time, will read the headline and pass on, leaving the article unread. What if a headline, taken alone or with an attached picture, is defamatory, but the text of the article removes the defamatory imputation? ...
>
> ... It cannot be heard to say that the article must be read as a whole when it knows that not all readers will read the whole article.
>
> f To anyone unversed in the law of defamation that, I venture to think, would appear to be the common sense of the matter. Long ago, however, the law of defamation headed firmly in a different direction. The law adopts a single standard for determining whether a newspaper article is defamatory: the ordinary reader of that newspaper. I leave aside cases g where some readers may have special knowledge of facts which would cause them to give the words a different meaning.
>
> *In principle this is a crude yardstick, because readers of mass circulation newspapers vary enormously in the way they read articles and the way they interpret what they read.* It is, indeed, *in this very consideration that* h *the law finds* justification for its single standard. The consequence is that, in the case of some publications, there may be readers who understand in a defamatory sense words which, by the *single standard* of the ordinary reader, were not defamatory ...
>
> ... The question, defamatory or no, must always be answered by *reference* i *to the response of the ordinary reader to the publication.* (emphasis added)

The single standard of the ordinary reader described above requires further elaboration. For this reason another decision of the House of Lords which has been referred to in the Malaysian case of the Institute of Commercial Management United Kingdom, cited by a counsel for the plaintiffs and already mentioned above could be perused. The case referred to is *Lewis & Anor v. Daily Telegraph Ltd.* [1963] 2 All ER 151, 154. The first relevant passage that could be mentioned is the statement of Lord Reid:

> There is no doubt that in actions for libel, the question is, what the words will convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in a ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs. I leave aside questions of innuendo where the reader has some special knowledge which might lead him to attribute to the words a meaning not apparent to those who do not have that knowledge.
>
> ... What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But the expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is also regarded as part of their natural and ordinary meaning.
>
> Generally the controversy is whether the words are capable of having a libellous meaning at all and undoubtedly it is the judge's duty to rule on that.

What is stated above is a general guideline. In order to decide the meaning to be given to the alleged offensive sentence the law adopts as its measuring stick the understanding of the ordinary reasonable man. The measuring stick described above was also applied by Lord Morris (p. 161):

> My lords, words are but the instruments which men use to express and convey their meanings. The learned judge asked the jury to say what meanings the words in question would convey, not to people with some special or particular knowledge, but just to ordinary men and women going about their ordinary affairs. It is in this sense that in defamation cases the phrase "natural and ordinary meaning" (which may include an implied or indirect meaning) is used. Not resting on any technical process of analysis or construction, nor on a process of critical reading, the inquiry is as to what meanings are conveyed to hearers or readers by the medium of words. This is a matter for the jury though a jury must not be asked to consider a meaning which the words in question are not reasonably capable of bearing.

The plaintiffs in this case have pleaded that the words found in the alleged offensive sentence are to be attributed certain meanings. It is noted that in addition the plaintiffs have set forth in the reamended statement of claim the following paragraphs:

> 11. Further or alternatively, the words complained of in Paragraph 7 above by way of innuendo bore the meanings set out in Paragraph 10 above and further meanings that:
>
> (1) the Plaintiffs are not persons with any integrity whatsoever; and
>
> (2) the Plaintiffs are persons without any strong principles whatsoever in life.

However, these parts of the pleading were no longer pursued, and it has been ascertained that it is not necessary for me to address this part of the pleading. With regards to para. 10 of the pleadings, again mention may be made of the following passages of Lord Morris in the *Lewis* case (p. 160):

> In a case where there is no innuendo pleaded, it is not essential for a plaintiff to record and define in his pleadings what he says are the ordinary or direct or natural or implied meanings of the words. **If, however, he does do so** (as may often be helpful provided it is made clear what is being done) and, if the judge **considers that the words are not capable of bearing any one or more of such meanings, he ought so to rule**. If the plaintiff does not do so the various meanings suggested by the plaintiff will almost invariably be canvassed during the trial and if the judge considers that the words are not capable of bearing any one or more of them again he ought so to rule. (emphasis added)

Lord Hodson in his judgment in the same case has also rendered certain statement of similar effect (at pp. 166-167):

> I agree with the observations of Holroyd Perarce LJ, in *Grubb v. Bristol United Press, Ltd* (25) to the effect that RSC, O. 19 r. 6(2), makes no alteration in the law except in cases where a true innuendo is pleaded. A pleader is entitled to allege in his statement of claim what the words in their natural and ordinary meaning convey, provided he makes it clear that he is not relying on a true innuendo, which gives a separate cause of action and requires a separate verdict from the jury. It is desirable that he should do so, for, where there is no true innuendo, the judge should define the limits of the natural and ordinary meaning of the libel and leave to the jury only those meanings which he rules are capable of being defamatory ...

> ... There is one cause of action based on the words in their natural and ordinary meaning and another based on the words in such meaning as may be alleged in a true innuendo but not a third cause of action based on the false innuendo.

I find that the plaintiffs' contention rests on the direct or natural and/or implied meaning of words which are categorised as the popular innuendo (or false innuendo as it is sometimes described) and not on the "true" or legal innuendo.

And finally Lord Devlin pinpoints some of the difficulties that can be encountered in order to arrive at the natural and ordinary meaning:

> My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is, as a matter of pure construction, undoubtedly true. **But it is very difficult to draw the line between pure construction and implication**, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and, unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.
>
> ... Accordingly, an innuendo, however well concealed, that is capable of being detected in the language used is deemed to be part of the ordinary meaning ... (emphasis added)

In the treatise *Defamation Law, Procedure & Practice* by David Price (2nd edn) the claimant must identify what he claims to be the natural and ordinary meanings of words as understood by the ordinary reader. It has been established that this ordinary reader has certain characteristics. However, his most notable attribute is his ability to read between the lines and not to be chained to the literal meaning conveyed by the words. The natural and ordinary meaning therefore includes what might be popularly understood as an innuendo that is something which is insinuated or inferred from the words.

Price has also usefully summarised what he termed as principles of construction emerging from the speeches of the House of Lords in the *Lewis* case as follows:

1. The natural and ordinary meaning is that which the words convey to ordinary reasonable persons.

2. The ordinary reader is not avid for scandal but can read between the lines and draw inferences. Ordinary men and women have different temperaments and outlooks. Some are unduly suspicious and some are unusually naive. One must try to envisage people between these two extremes and determine the most damaging meaning that they would put on the words. However, where there are a number of innocent interpretations, the ordinary reader will not seize on the only defamatory one. On the facts of *Lewis*, it was held that only an unduly suspicious person would have concluded that the plaintiffs had been guilty of fraud simply because the police were investigating their affairs.

3. The effect of the publication on an ordinary reader is one of impression and the court should be wary of an over-elaborate analysis. The narrow and analytical construction put on words by a lawyer is inappropriate. This is particularly the case in relation to television broadcasts where the visual aspect is important and where a defamatory implication is likely to be conveyed in subtle terms, for example by juxtaposition of material.

4. It follows from (1) that the meaning the defendant intended to convey is irrelevant for this purpose. The court is concerned solely with the objective test of how the words would be understood. It was therefore no defence for the newspaper in *English and Scottish Co-operative* to allege that they did not intent to accuse the plaintiff of fraud.

5. Equally, the way in which the words were in fact understood is irrelevant. No evidence can therefore be adduced of how the words were understood in relation to meaning. The parties cannot, for example, conduct readership surveys in support of their respective cases. However, the way the words were understood is relevant in determining the extent of the injury to the claimant's reputation and witnesses in a defamation claim may therefore give evidence of how they understood the words, but solely for that purpose. The jury must then be directed to engage in the sort of logical game more suited to lawyers and disregard the evidence when determining meaning. They are simply to put themselves in the position of the ordinary reader, ignoring how anyone else has understood the words, and form their own view.

6. The ordinary reader takes notice of the circumstances and manner of the publication, such as the prominence given to the allegations. Where a particular matter is given prominence in a newspaper it may be assumed that it is one of significance and is therefore more likely to convey a defamatory meaning to the ordinary reader. In *English*

> *and Scottish Co-operative* the prominence given to the article and headline – "False profit return charge against Society" was a matter which could lead the jury to conclude that "false" would have been understood to mean fraudulent rather than merely mistaken. In contrast, words clearly spoken in circumstances where they could not reasonably be understood seriously, for example in jest or vulgar and abusive language in the heat of passion, will not be considered defamatory. However the submission that has occasionally been made on behalf of a newspaper, that nobody takes what they publish seriously, is unlikely to be successful and may have unfortunate consequences in relation to any defence it raises.

The plaintiffs and the defendants while relying on the measuring stick of the natural and ordinary meaning have arrived at different directions. This is the situation described in *Slim & Others v. Daily Telegraph Ltd. & Another* [1968] 1 All ER 497 by Diplock LJ (at pp. 504-505):

> ... Libel is concerned with the meaning of words. Everyone outside a court of law recognises that words are imprecise instruments for communicating the thoughts of one man to another. The same words may be understood by one man in a different meaning from that in which they are understood by another and both meanings may be different from that which the author of the words intended to convey; but the notion that the same words should bear different meanings to different men, and that more than one meaning should be "right", conflicts with the whole training of a lawyer. Words are the tools of his trade. He uses them to define legal rights and duties. They do not achieve the purpose unless there can be attributed to them a single meaning as the "right" meaning. *And so the argument between lawyers as to the meaning of words starts with the unexpressed major premise that any particular combination of words has one meaning, which is not necessarily the same as that intended by him who published them or understood by any of those who read them, but is capable of ascertainment as being the "right" meaning by the adjudicator to whom the law confides the responsibility of determining it.*
>
> ... In the present appeal, although legal innuendoes (see *Lewis v. Daily Telegraph, Ltd.* (4)) have been pleaded, no reliance has been placed in the argument to them. The whole discussions has been about the "natural and ordinary meaning" of the words used in the letters. What is the "natural and ordinary meaning" of words for the purposes of the law of libel? *One can start by saying that the meaning intended to be conveyed by the publisher of the words is irrelevant.* However evil the imputation on the plaintiff's character or conduct he intended to communicate, it does not matter if, in the opinion of the adjudicator on the meaning of the words, they did not bear any defamatory meaning. However innocent an impression of the plaintiff's *character or conduct the publisher of the words intended to communicate, it does not matter if, in the opinion of the adjudicator on the meaning of words, they did bear a defamatory meaning.*

> This would be rational enough if the purpose of the law of libel were to afford compensation to the citizen for the unjustifiable injury to his reputation actually caused by the publication of the words to those to whom they were communicated. But although in assessing damages the courts now accept this as the purpose of the civil action (see *Rookes v. Barnard* (5) and *McCarey v. Associated Newspapers, Ltd* (6)), *we refuse to accept its logical corrollary that the relevant question in determining liability for libel is: "What did those to whom the words were published actually understand them to mean?"* The best evidence of that would be the evidence of the person to whom the words were actually published. Yet, *save in exceptional cases where a "legal" innuendo is relied on, it is not even permitted to ask a witness to whom the words were published. "What did you understand them to mean?" What he did actually understand them to mean does not matter.* This too might be rationalised on the ground that the publisher of the words ought to be responsible in law only for the injury caused to the plaintiff's reputation by those defamatory inferences which a reasonable man might draw from the words published, and the witness to whom the words were published may not have been reasonable in drawing the defamatory inferences which he in fact drew. This rationalisation, however, breaks down once it is conceded, as it has been by the House of Lords in *Lewis v. Daily Telegraph, Ltd.* (7), that one man might be reasonable in drawing one defamatory inference from the words and another man might be reasonable in drawing another defamatory inference. Where, as in the present case, words are published to the millions of readers of a popular newspaper, the chances are that if the words are reasonably capable of being understood as bearing more than one meaning, some readers will have understood them as bearing one of those meanings and some will have understood them as bearing others of those meanings. But none of this matters. *What does matter is what the adjudicator at the trial thinks is the one and only meaning that the readers as reasonable men should have collectively understood the words to bear. That is "the natural and ordinary meaning" of words in an action for libel.* (emphasis added)

Further on Lord Diplock went on to state (p. 505):

> The decision as to defamatory meaning which words are capable of bearing is reserved to the judge, and for this reason and no other is called a question of law. The decision as to the particular defamatory meaning within that category which the words do bear is reserved for the jury and for this reason and no other is called a question of fact.

This leads to the next question. How is this situation dealt with when a judge sits alone without a jury. The English cases often cited is a situation where there is a judge and a jury. Here again the statements of Diplock LJ in the *Lewis* case are found to be useful where he observed:

> ... Where, an action for libel is tried by a judge alone without a jury, it is he who has to arrive at a single "right" meaning as "the natural and ordinary meaning" of the words complained of; and with the concentration of functions in a single adjudicator, the need for his distinguishing between meanings which words are capable of bearing and the choice of the one "right" meaning which they do bear disappears. It would be carrying artificially too far, even for the law of libel, to suggest that a judge sitting alone must approach the issue as to the natural and ordinary meaning of the words complained of by asking himself not only the question: "What is the natural and ordinary meaning in which the words would be understood by reasonable men to whom they were published?", but also the further question – "Could reasonable men understand them as bearing that meaning?"
>
> ... It is for the judge to rule whether or not any particular defamatory meaning for which the plaintiff contends is one which the words are capable of bearing. ...
>
> ... Where, however, a judge is sitting alone to try a libel action without a jury, the only question he has to ask himself are, "Is the natural and ordinary meaning of the words that which is alleged in the statement of claim?" And, 'If not, what, if any, less injurious defamatory meaning do they bear?'

Having dealt with aspects of the law there is yet another contention of the defendants with regard to the contents of the whole article. Counsel for the defendants has described the whole article as it has been published a satire. The 1st defendant refers to it as parody. Some things are said to be in jest to ridicule or to mock certain personalities. But even more so the emphasis has been emplaced on the intention to review the dubious achievement of the political personalities mentioned therein.

To begin with and as has already been mentioned above in *Slim*'s case, Lord Diplock has stated that for the purposes of the law of libel "one can start by saying that the meaning intended by the publisher of the words is irrelevant." Again in *Berkoff*'s case Neill LJ also affirmed when he said (at p. 1018):

> It is trite law that the meaning of words in a libel action is determined by the reaction of the ordinary reader and not by the intention of the publisher, but the perceived intention of the publisher may colour the meaning.

In order to buttress the contention concerning the intention of the 1st defendant to write about dubious political achievements, counsel for the defendants has also cited the case of *Norman v. Future Publishing Ltd.*

[1999] EMLR 325. It is notable that in this case the headnote above reflects several cases have been applied and I find it useful to set down the "measuring sticks" applied which is the following:

1. The court should give the words the natural and ordinary meaning which they would have conveyed to the ordinary, reasonable, fair-minded reader of the magazine at the time of their publication. The reasonable reader was neither unduly suspicious nor unduly naive, and he was not avid for scandal nor bound to select one defamatory meaning when non-defamatory meanings were available.

   Lewis v. Daily Telegraph Ltd [1964] AC 234 and *Skuse v. Granada* TV LW [1966] EMLR 278 applied.

2. To arrive at the proper meaning the words must be read in their context within the article as a whole, so that the words complained of should not be interpreted in isolation from the related text, but by reference to the response of the ordinary reasonable reader to the entire publication.

   Charleston v. News Group Newspapers Ltd [1995] EMLR 129 applied.

3. The court should be cautious of an over-elaborate analysis of the material in issue. The meaning should be one gained by the reader as a matter of first impression.

   Skuse v. Granada TV Ltd (above) and *Slim v. Daily Telegraph Ltd* [1968] 2 QB 157 applied.

4. Where it was alleged that the words complained of were defamatory because they exposed the plaintiff to ridicule, the line had to be drawn between insults and mockery on the one hand and ridicule on the other hand. The exact borderline might often be difficult to define and where it was, it should be left to the jury to draw it. In drawing the line the context of the words, the perceived intention of the writer and the circumstances in which the words were used, which included the plaintiff's position in society and in the public eye, were important.

   Berkoff v. Burchill [1997] EMLR 139 applied.

However it would not suffice to enumerate the above without examining the facts. *Norman*'s case stressed that much of the argument before the court focussed on the decision in *Berkoff v. Burchill.* Hirst LJ is referring to the facts of the latter case mentioned:

The plaintiff in that case was a well known actor, director, and writer for stage, screen and TV, and his complaint related to publications in the Sunday Times, the first of which stated "Film directors from Hitchcock to Berkoff are notoriously hideous-looking people". Subsequently, in a review of a film called Frankenstein, the author, having described the repulsive appearance of a character called "The Creature", said, "It's a lot like Stephen Berkoff, only marginally better-looking." The natural and ordinary meaning relied upon was that the words meant that Mr Berkoff was hideously ugly. The plaintiff contended that, even though the words did not involve an attack on the plaintiff's reputation in a conventional sense, they went beyond abuse and had become defamatory by exposing Mr Berkoff to ridicule.

After having cited from the various judgment of Neill LJ and Millett LJ, and Phillips LJ in the *Berkoff* case, Hirst LJ went on to observe:

It will be seen that the court was unanimous that the line has to be drawn between (in the words of Neill LJ) insults and words that hold the plaintiff up to ridicule, or (in the words of Millett LJ) mockery and defamation; that the exact borderline may often be difficult to define or draw; and that when it is, it should be left to the jury to draw it. Where Millett LJ differed from the majority was that he felt, unlike them, that the words fell clearly on the wrong side of the line from the plaintiff's point of view.

Both Neill LJ and Phillips LJ were concerned to stress the importance of the context, the perceived intention of the writer, and the importance of interpreting the words "in the circumstances in which they are used" (per Phillips LJ), which clearly include, as Neill LJ pointed out, both their context and the plaintiff's position in society and in the public eye.

However the findings of the Court of Appeal in *Norman*'s case contrasted with the findings in *Berkoff's* case. The facts in the *Norman* case were as follows:

The plaintiff was a famous opera singer. The defendant was the publisher of Classic CD, a music magazine. The defendant published an article about the plaintiff which contained the sentence "This is the woman who got trapped in swing doors on her way to a concert, and when advised to release herself by turning sideways replied: 'Honey, I ain't got no sideways.'" The plaintiff had not spoken the words attributed to her. The plaintiff brought proceedings for libel. The defendant applied under Order 83, rule 3A for a determination that the words complained of were incapable of bearing the meanings alleged by the plaintiff. The judge granted the application. The plaintiff appealed. On the appeal the plaintiff contended that the words bore the following meanings: (1) that the plaintiff had used a mode of speech which (a) was vulgar and undignified and/or (b) conformed to a degrading racist stereotype of a person of African-

American heritage; or (2) that the plaintiff had been guilty of patronising mockery of the modes of speech and stereotypically attributed to certain groups or classes of black Americans, and was thereby guilty also of hypocrisy.

In dismissing the appeal in the *Norman* case, it was held that:

5. Meanings 1(b) and 2 were far-fetched in the extreme, in particular because the words did not reflect an African-American stereotype.

6. The article as a whole portrayed the plaintiff as a person of high standing and impeccable dignity and with a sense of artistic discrimination and personal propriety which was the very reverse of vulgar. It followed that the reasonable reader would not perceive the intention of the writer to be to ridicule the plaintiff. Taking the context and circumstances into account, the words complained of were not capable of bearing meaning 1(a).

Peter Gibson LJ in his judgment expressed in a sentence what made the *Norman* case different from the *Berkoff* case in that:

> This case is no way comparable to *Berkoff v. Burchill* [1996] 2 All ER 1008 where the deliberate intention to expose the plaintiff to ridicule was obvious.

The difference in the *Norman* case was the way in which the article portrayed the plaintiff as described by Hirst LJ as follows:

> The article as a whole portrays the plaintiff as a person of high standing and impeccable dignity, and with a sense of artistic discrimination and personal propriety which is the very reverse of vulgar. It follows that I do not think the reasonable reader would perceive the intention of the writer to be as suggested by Mr Rampton and thus, applying the *Berkoff v. Burchill* tests of context and circumstances (as explained by Neill LJ), I have come to the conclusion that the words are not capable of bearing meaning (1)(a) either.

Having regard to the position of the law I return again to the facts in the present action and the meaning as pleaded.

There are therefore two steps involved in deciding whether or not the alleged offensive sentence is defamatory or not. The first is to consider what meaning the words would convey to the ordinary person. Having established the meaning the next stage is whether under the circumstances in which the words were published, the reasonable person would be likely to understand them in a defamatory sense. The abstraction or measuring stick of an ordinary man is but a measure to strike a balance between freedom of speech and the safeguard of reputation.

In the *Lewis* case Lord Devlin stated *inter alia* "that the natural and ordinary meaning of words for the purpose of defamation is not their natural and ordinary meaning for other purposes of the law. There must be added to the implications which a court is prepared to make as a matter of construction all such insinuations and innuendos as could reasonably be read into them by the ordinary man."

Counsel for the defendants have submitted that the article is to be taken in its entirety for the alleged offensive sentence is not to be taken in isolation. In *Slim*'s case *(supra)* Lord Denning MR (as he then was) stated:

> ... I think that when a plaintiff complains of the words in their natural and ordinary meaning, he must accept that meaning as it is with all the derogatory imputation that it conveys. He cannot select some of the imputations and reject others as he pleases. The reason is because when he complains of libel, he complains of the injury which the words do to his reputation in the mind of the ordinary reader. Now the ordinary reader takes the imputations as a whole. "He does not divide them up into bits. Nor should the plaintiff be able to do so ..."

Further on in the same passage Lord Denning also said:

> ... When the defendant comes to plead his defence, he cannot select some of the imputations and reject others. If he justifies, he pleads in the customary form: "the said words in their natural and ordinary meaning were true in substance and fact" without specifying any particular imputations. So we see that, in the customary form of pleading, neither plaintiff nor defendant is allowed to make selections of some of the derogatory imputations. Each must accept the words as conveying all such imputations as the jury think they bear: and make his claim or defence accordingly ...

The decision of Lord Diplock in the same case has already been elaborated and I find that the whole submission has been about the natural and ordinary meaning of the use of the words that are used in the article. I have to be reminded, however, that I am not here concerned with the paraphrasing of the interpretation that has been given by the plaintiffs in p. 38 of their statement of claim. The task here is to determine whether the words in their natural and ordinary meaning bear the defamatory imputation that is claimed by the plaintiffs in para. 10 of the amended statement of claim.

The article in question is entitled *"Rearview Glimpse of 1995 Politics"*. Several politicians as well as political parties are mentioned in that same article. The plaintiffs contend that the references to personalities other than Dato' Nazri Aziz are in the context of their political roles whereas in the case of Dato' Nazri Aziz there is an additional difference. It may be that the article in its main context does reflect the title that is it is an evaluation of the political scene in 1995. Where each and everyone of the personalities has been mentioned by the writer of the article namely the 1st defendant, it does contain a description of whatever political role or political contribution that had been rendered. Alternatively there is description of the manner in which the personalities have discharged their functions or tasks in the political scene. The gist of the defendants' contention is that the whole article is a parody as though the punch-line is to poke fun or even to ridicule the personalities.

I now turn to the entire paragraphs in which the alleged offensive sentence appears. In the course of the cross-examination, the 1st defendant has revealed that Dato' Nazri Aziz by profession is a lawyer and had left the practice since his appointment as Deputy Minister. I note from counsel for the plaintiffs' submission that nowhere is it disclosed in evidence that Dato' Nazri Aziz has any intention of returning to his former practice and the Deed of Partnership has shown that the firm is allowed to practise under the same name. Looking at the sentence itself the words "Hope his law firm is doing decent business" are followed by three dots; in my view the three dots do not serve to be equated with an expletive but it does imply that some more words could be added on.

The defendants have contended that in their natural and ordinary meaning and in the context of the article itself, the three paragraphs refer to Dato' Nazri Aziz. At the material time of writing the article the 1st defendant admits to writing articles which are political in nature with what he described "an off beat angle."

The 1st defendant also admitted that the article was a review of the dubious achievements of Malaysian politicians which was meant to be caustic and not complimentary.

There was also a purported reference to a series of articles written by other writers not really directly about Dato' Nazri Aziz but in respect of Tan Sri Rahim Thamby Chik. I do not find this useful in assisting the court in determining the meaning that is to be attributed to the alleged offensive sentence. That would be stretching the contents of the article to other publications which should not be considered for the present matter.

Now while the entire article was described as a satire, the words used in the various contexts are not necessarily uniform in the sense of being flippant or merely bantering. Some words are derisive in nature. On this aspect the contention of the defendants is that even if the plaintiff has been ridiculed a line should be drawn between insults and mockery on the one hand (which is not defamatory) and ridicule (which may be defamatory).

The reasoning appears to be this. There is to be perceived an intention to ridicule whosoever that is mentioned in the article including Dato' Nazri Aziz. Therefore the last alleged offensive sentence is also to be understood by a reasonable person to bear the meaning that is still intended to refer to Dato' Nazri Aziz.

This contention is not consistent with what was pleaded in the statement of defence. The defendants contend that Dato' Nazri Aziz is a fickle or middling personality and the alleged offensive sentence is to be understood to mean that based on the behaviour shown by Dato' Nazri Aziz it is hoped that his law firm will obtain good business.

Before making a finding on this argument, it is now proposed to examine the plaintiff's contention that these words bear defamatory imputation. But there is need to mention that the defendants have not advanced anything to show that the natural and ordinary meaning that they rely upon are true in substance and fact.

For the plaintiff it has been contended that there is something else about the three paragraphs namely there is a sudden reference to a law firm. In the words of the counsel for the plaintiff, the law firm has been singled out.

The 1st defendant in pointing the article has also singled another personality, although not by name namely the Attorney General. Thus, apart from the alleged satire on politician the 1st defendant as the writer, has made a reference to someone else who is not a politician. This also accounts for the counsel for the plaintiff asserting that the whole article is written after a research has been done to warrant such an account of the so-called dubious achievements of the personalities named therein although this has of course been refuted by the defendants.

I turn now to the use of the word "decent" in its reference to the law firm. The word has to be considered in its context. The word could be used in varying context such as "decent manners", "decent dressing" or "decent behaviour". In its natural and ordinary meaning the word "decent" in those contexts could be understood to be something that is good and creditable.

However, in the present context the word appears not only amidst an article which is described as a satire, but also where the descriptions of persons are admitted to be not at all complimentary. Do the words then fall on the wrong side, in that it is to be reasonably understood to bear not just the literal meaning that the conduct of the firm's business is decent. This is where it is found that the argument advanced for the defendants as one where the reasons have been formulated after the event. Nowhere in the contents of the article itself are there words where the reasonable and ordinary reader could understand or imply that as the consequence of the alleged fickle conduct of Dato' Nazri Aziz, he will return to his law firm and I do not find that it could be understood that he will return to his law firm.

As stated by Millett LJ in the *Berkoff* case:

> Many a true word is spoken in jest. Many a false one too. But chaff and banter are not defamatory, and even serious imputations are not actionable if no one would take them to be meant seriously. The question, however, is how the words would be understood, not how they were meant, and ...

What is also to be noted is this. It has already become a feature in Malaysia that caricatures and cartoons portray politicians and other public figures in such a way to make them appear funny or absurd. However, what is perhaps permissible in respect of politicians as entertainers as seen in the *Berkoff* case may not be if applied to a person in private life where a public character whose public life or great position is calculated to generate interest his portrayal in an exaggerated form may not reasonably tend to injure his reputation in the sense of making him an object of ridicule. An imputation is defamatory if it tends to lower a person in the estimation of others when it affects any aspect of his reputation. Here the defendants have actually referred to the business of the law firm and not the political activity of Dato' Nazri Aziz in the alleged offensive sentence. It may not be defamatory to say that the lawyer is less talented than another but it may be defamatory to impute that the business practice of a law firm is discreditable. There is a risk of injury to the business reputation.

The 1st plaintiff has stated that since the inception of the partnership 14 years ago the firm had worked hard to establish professional reputation and goodwill and has had transactions with financial institutions and corporate bodies.

With regard to the perceived intention I find that applying *Norman*'s case to the present circumstances is not apt at all. In fact it is more in line with the circumstances in the *Berkoff* case. Here the entire article does not contain glowing tributes but to be full of sarcasm. The effect of the irony or sarcasm is to render defamatory an apparently innocent expression. The plaintiffs have been referred to and implied in the use of the word "decent" in a sense that is contrary. In other words the firm that is referred to in the sentence could be understood to carry out its business in a discreditable way. The plaintiffs are hit not in respect of the personal character but in respect of the conduct of their business in the legal profession.

The words bear defamatory imputation on the conduct of the business of a legal firm in that it is implied that since Dato' Nazri Aziz is somewhat dubiously double dealing in his political activity it is hoped that his law firm will not conduct business in a way that could be equated to him. If in the words of the author Dato' Nazri has been tergiversating it is strange to state that it is to be understood that his firm will obtain good business if in the first place there is implied that the firm could be equated to him. In my view the alleged offensive sentence imputes conduct the reasonable man considers discreditable although the author of it has stated that in his view it means the conduct is proper in that of Dato' Nazri returning to his firm and his firm getting good business. It is not therefore reasonable to understand the words to mean in its whole context that after a dubious performance Dato' Nazri Aziz will make a comeback to legal practice. The grammar used is itself in the present tense and not in the future tense. For the purpose of the law of defamation it does not matter here that there are persons who may know that it is untrue or that it is not possible for Dato' Nazri to return to the law firm to practise without leaving his political career.

The next question that arises is whether the words are capable of bearing all the meanings attributed to them in para. 10(1)-(4). Here however, it is to be remembered that the ordinary reader who is in touch with worldly affairs has to understand the words together with any first impression that goes with it. Here I have difficulty in agreeing that the words are capable of bearing the meaning attributed to it by the plaintiff in the last part of sub-para. (4) of para. 10 at p. 38 the part being "and/or committed or attempted to commit

criminal offences by using the said firm as a front". I could accept the inferential scope of the word "decency" to be connected to the question of ethics or moral recrimination but in the circumstances in which the words appear I find it to be stretching the meaning to attribute to the words the understanding of a reasonable reader that the firm is also implied to carrying on criminal offences.

I find therefore that the alleged offensive sentence is capable of bearing the meaning set out in sub-paras. (1), (2), (3) and only part of sub-para. (4) ie, where it stated "accordingly the plaintiffs are guilty of breaching rules of practice and etiquette" excluding the remainder of that sentence.

The parties are therefore to proceed to the next stage on the question of the quantum of damages.